

**Moultonborough Zoning Board of Adjustment
P.O. Box 139
Moultonborough, NH 03254**

Regular Meeting

July 6, 2016

Minutes

Present: Members: Bob Stephens, Ken Bickford, Bob Zewski, Robert St. Peter
 Alternates: Nick DeMeo, Richard Jenny
Excused: Member: Russ Nolin
 Alternate: Jerry Hopkins, Paul Onthank
Staff Present: Executive Assistant: Carol Fucarile

I. Call to Order

Chairman Stephens called the meeting to order at 7:00 PM and led the Pledge of Allegiance. He then introduced Carol Fucarile who was substituting for Bonnie Whitney as well as the members of the Board to the public. Mr. Stephens appointed Nick DeMeo to sit on the Board with full voting privileges in place of member Russ Nolin.

II. Pledge of Allegiance

III. Approval of Minutes

Motion: Mr. Zewski moved to approve the Zoning Board of Adjustment Minutes of June 15, 2016, as written, seconded by Mr. St. Peter, carried unanimously, with Mr. Bickford abstaining.

IV. Hearings

1. Alan E. & Elisa F. Walts (146-9) (11 Toltec Point Road)
 Variance from Article III.B. 3 & B.4

Mr. Stephens explained the reason we are here and how the zoning ordinance is not clear. Mr. Stephens spoke with Code Enforcement Officer, Don Cahoon, about the project. Under the current zoning ordinance, if a tear down is done, you lose the grandfathered rights in a nonconforming condition. What is not clear is that if you remove a portion of that structure, can it be rebuilt on the exact same footprint? Under nonconforming structures, Section E, Item I, it says that no such nonconforming structure maybe enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof maybe altered to decrease its nonconformity. What is being reduced here is the deck portion of that structure. So, is the deck portion part of the structure to be treated as such in setback conditions? The Zoning Board has the authority and the right to make a determination as to whether or not a variance is even required. Before we look at whether or not a variance hearing is needed, Mr. Stephens asked the Board for feedback as to whether we should we proceed on a variance. Don Cahoon had raised this question and didn't have anywhere to go to for specific guidance.

Attorney Christopher of Bolt of Donahue, Tucker & Ciandella, who represents the applicants, along with Nicole Roseberry of Ames Associates were in attendance. Attorney Bolt referred to the plan that was submitted wherein the “peach” color represents the existing structure that is being retained. A portion of that existing structure is within the nonconforming area with the fifty-foot setback as well as the new structure that is being put on the exact same footprint. He also stated that the deck on the south side is more conforming (back by a foot or two) and the stairs will be moved to the water side. Decks are treated as structures as to the setbacks. The setback on the northerly side is a triangle which will not change – will remain at 17.9’. The current detached garage will be demolished and an attached garage will be built. Height requirements will be met. A new septic and shoreline permits will be acquired.

Mr. Stephens again reminded the Board to make a determination as to whether or not this requires a variance or should it be construed as a rebuild and not losing grandfathered rights. The ordinance does allow for them to expand in the non-conformed area up to twenty percent.

Mr. Bickford stated that the left and front sides will be more conforming and the right side will be identical. Only a portion of the house is being demolished and will have a new foundation. Mr. Bickford invited Nicole Roseberry of Ames Associates for her opinion. Ms. Roseberry felt that there is no need for a more conforming action. The opinion of her office is that if the lot can be surveyed and the location of the structure can be pinned and shown by a surveyor, they don’t feel a variance is needed especially since they are staying within the grandfathered footprint. In this case, it is only a partial tear down.

Mr. Stephens stated that in his conversation with Don Cahoon, Don said he could measure the points and showed Mr. Stephens how this would be done.

Attorney Bolt wanted the record to state that the Board can make it a condition of their determination that the building has to go back in the same place (they have the mechanism), and plan on providing that evidence to the code enforcement officer.

Mr. Zewski said that this is a perfect scenario and he cannot envision how setting a precedence here could affect this adversely in the future. So, therefore, he is fairly comfortable in not going through the variance process.

Mr. DeMeo asked why this matter came to the Board in general if they are keeping half of the building in place because they are able to do this on the grandfathered basis. Mr. Stephens stated that this is a grey area, and Don Cahoon was not comfortable in making the administrative decision on his own because of the ordinance language. Mr. St. Peter agreed that Don Cahoon had made the right decision. Mr. Stephens personally does not think this requires a variance, but feels that if Bruce Woodruff, with his expertise, were still here, chances are that this matter might not be before them, but because of Bruce’s absence, we are here.

Mr. Jenny does not feel that it is appropriate to put the onus on Don Cahoon to find out where the building is – the applicant is the one that should submit a survey. Mr. Stephens stated that in effect that has been done. Don needs to be satisfied that the structure was put in the same place.

Motion: Mr. Bickford moved that the Board not hear the application for variance for 11 Toltec Point Road, MBLU 146-009 due to the fact that the Board has decided that a variance is not required in this matter because the addition is being made more conforming, seconded by Mr. St. Peter, carried unanimously.

V. Correspondence. None.

VI. Unfinished Business

1. The Chair noted that they still do not have a Town Planner. In the meantime, the Board of Selectmen have contracted with Gerald Coogan, AICP, from New London, NH, as an interim consultant. Mr. Coogan will be in the office one day a week. His focus will mostly be with the Planning Board and the Master Plan.

2. The Chair noted that the Board of Selectmen have retained the Drummond Woodsum law firm as town counsel. Attorney Matt Serge of that firm will be working with the Town. The Chair has met with Attorney Serge. The Chair sent Attorney Serge a complete packet of the Haydon case, along with the meeting notes, etc. and asked him to review that information and formulate an opinion that the Board can look at after receiving the feedback from the Board members. Attorney Serge has responded, and the Chair handed out copies of that response to each member of the Board. The Chair did not want to get into a deliberative environment, but asked the members to read Attorney Serge's response. If and when Attorney Bolt files for a new hearing, based on the granting of the rehearing, then they will have a conversation. If any Board member feels it necessary to have a conversation with the town's attorney on this matter, then email Bonnie (Carol will check Bonnie's emails in her absence) and asked the Board to not discuss the letter amongst each other. Discussion was had concerning attorney/client privilege and the Right to Know Law. A copy of Attorney Serge's letter will be emailed to Mr. Nolin and Mr. Hopkins.

VII. Adjournment

Motion: Mr. Bickford made the motion to adjourn at 7:35 PM, seconded by Mr. St. Peter, carried unanimously.

Respectfully Submitted,
Carol Fucarile
Executive Assistant

NOTICE: These DRAFT Minutes have not been formally approved by the Zoning Board of Adjustment. Please contact the Office of Development Services after the next regularly scheduled meeting of the Moultonborough Zoning Board of Adjustment to be held on the 1st and 3rd Wednesday of each month, to learn if any corrections, additions or deletions were made.